IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8585 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LILADHARBHAI GOVINDBHAI KORAT

Versus

PARDI JUTH SEVA MANDALI LTD.

Appearance:

1. Special Civil Application No. 8585 of 2002

MR MURALI N DEVNANI for Petitioner No. 1

MR HRIDAY BUCH for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/07/2003

ORAL JUDGEMENT

#. With the consent of the parties, the matter is taken up for final hearing today.

#. By filing this petition, the petitioner has challenged the interim order passed by the Presiding Officer, Labour Court, Rajkot dated 9.7.2002. By the impugned order, the Labour Court has declined to grant any interim relief to the petitioner in connection with the payment of subsistence allowance during the pendency of the reference. The petitioner herein has raised the industrial dispute, which is pending before the Labour Court, being Reference (LCR) No.6/99. The case of the petitioner workman is that he is removed from service without holding any departmental inquiry worth the name. During the pendency of the said reference, the Management gave the application at Exh.9 for giving them an opportunity to lead the evidence before the Court in order to establish the misconduct of the concerned workman. At that stage, the petitioner workman submitted before the Labour Court that he was removed from service without holding any inquiry and that he may be paid subsistence allowance. The Labour Court, while deciding the interim application, came to the conclusion that the concerned workman was already removed from service at the time when the industrial dispute was raised and that reference is made for getting the benefit of reinstatement with full back wages. The Labour Court came to the conclusion that in view of the order of removal, relationship between the petitioner and the respondent came to an end. The Labour Court ultimately decided to hear the said issue, i.e. whether the order is passed in violation of the principles of natural justice or, whether any inquiry is held against the petitioner workman before passing the removal order, as preliminary issue. The Management is given an opportunity to lead the evidence in this behalf. The Labour Court came to the conclusion that, in case, the workman is able to prove his case, he can be adequately compensated by awarding necessary benefits from the date of the removal order. The Labour Court, ultimately, found that this is not a case in which the interim order regarding payment of subsistence allowance can be passed especially when the services of the concerned workman have come to an end in view of the removal order.

#. Considering the reasoning of the Labour Court, in my view, the interim order of the Labour Court is not required to be interfered with by this Court in its extra-ordinary jurisdiction under Article 226/227 of the Constitution of India. It is needless to say that, in case, ultimately, the order of punishment is set aside, naturally, the petitioner will be entitled to all consequential benefits, which may be awarded by the Labour Court at the time of disposing of the reference.

The Labour Court has also come to the conclusion that, legality of the departmental inquiry is to be decided first by way of preliminary issue and that question is still at large before the Labour Court. Under these circumstances, the order of the Labour Court is not required to be interfered with by this Court. However, in the facts and circumstances of the case, the Labour Court is directed to dispose of the reference at the earliest and latest by 31/12/2003.

#. In view of the aforesaid direction for early disposal of the reference, Mr.Devnani wants to withdraw this petition. Permission is granted. The petition stands disposed of as withdrawn. Rule is discharged with no order as to costs. Writ of this Court be sent forthwith.

#. Since the reference is of 1999 the aforesaid direction for disposing of the same by the stipulated time is given, so that, cause of the workman may not suffer by way of delay in deciding the said reference. The Labour Court is accordingly directed to dispose of the said reference by the aforesaid date and the Management is directed to cooperate for the expeditious disposal of the reference by the aforesaid date.

(P.B.Majmudar,J)
(pathan)